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CASES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1924

SAVAGE ARMS CORPORATION, APPELLANT
v.
THE UNITED STATES
No. 13

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

I

STATEMENT

Savage Arms Corporation was engaged exclusively during the World War in the manufacture of Lewis machine guns and spare parts, including magazines. (Tr. 22.) It had 18 contracts with the Government for the manufacture and delivery of Lewis machine guns alone for the Army and Navy under which it actually delivered, up to and including June 20, 1919, 2,201,568 such magazines with aggregate profits of $4,417,546.98, on which it was obliged to pay taxes. (Tr. 22.) It had other large contracts for manufacture and delivery of machine guns, small

arms, and munitions. Under a contract to increase the producing facilities of Savage Arms Corporation, the Government expended $2,850,000 for the erection of buildings and machinery and retained title thereto. (Tr. 22.) The accounts with respect to all of these various contracts and activities were pending during the performance of the contract on which the suit was brought. (Tr. 22.)

Among them was a contract executed on April 30, 1918, by which Savage Arms Corporation agreed to manufacture and deliver to the United States and the latter agreed to pay for certain spare parts for 22,000 Lewis machine guns. There was a separate contract, dated June 6, 1918, covering the 22,000 Lewis aircraft machine guns. Originally the two contracts were embraced in one but they were later separated. (Tr. 22.) The single item now involved relates to 440,000 magazines for the Lewis machine guns, aviation type, for which $4.24 each was agreed to be paid. (Tr. 23.)

While engaged in the performance of its contract of April 30, 1918, a supplemental contract, dated *January* 18, 1918, was executed by which the requirement for the manufacture and delivery of 22,000 shell deflectors provided in the contract of April 30, 1918, was canceled because it was a duplication of the same requirement in the contract of June 6, 1918; the Government was released from all claims arising out of that cancellation and, except as thus modified, the terms and conditions of the

contract of April 30, 1918, were allowed to remain in full force and effect. (Tr. 23.)

Beginning on September 28, to and including December, 1918, 24,347 of the 440,000 magazines were delivered. (Tr. 23.)

On January 29, 1919, notice was issued (Tr. 23) from office of Chief of Ordnance, Washington, signed by the contracting officer thereof, addressed to appellant at Utica in which, by direction of the Chief of Ordnance, the appellant was (*a*) "*requested in the public interest* immediately to suspend operations under your contract, or order, * * * to the extent of 298,000 magazines, together with their spare parts;" (*b*) "* * * also requested except for the purpose of completing deliveries or in cases of proved necessity, to order no further materials or facilities, enter into no further subcontracts, make no further commitments, and incur no further expenses in connection with the performance of said contract or order."

The notice further stated (Tr. 24), "This request is made with a view to the negotiation of a supplemental contract providing for the modification, settlement, and adjustment of your existing contract, or order, in a manner which will permit of a prompt settlement."

This notice requested immediate acknowledgment with indication of decision as to compliance or rejection and stated that upon notice of compliance a representative of the Ordnance Department will

forthwith take up with appellant the proposed negotiation. (Tr. 24.)

Rochester District Claims Board, to whom the notice was forwarded, communicated the purport thereof to Savage Arms Corporation. (Tr. 24.) An agent of the latter entered into verbal negotiations with an official of the Claims Board (whose name does not appear) relative to same. (Tr. 24.) The Claims Board had no authority to change the suspension order (Tr. 24), but the agent and the official arrived at an understanding "to the effect that the order of suspension should operate to the extent of 142,000 magazines instead of the 298,000 stated in the notice" (Tr. 24).

These negotiations with the official at the Claims Board had reached such a stage and were so successful as that in less than two weeks appellant was able to report; for on February 13, 1919, appellant wrote to the Secretary of the Claims Board, "We have your letter of January 31st, including suspension notice dated January 29th from Washington, * * *. Our Mr. Phillips, from Utica, has discussed this matter with you, and it is understood that the suspension notice as received is not correct. We therefore await a change in the wording of this notice to correspond with *the later instructions received at our Utica plant.*" (Tr. 24.) Before its letter of February 13, 1919, was written, appellant had stopped work on the 142,000 magazines, having received the verbal instructions above mentioned to discontinue the manufacture of that number, although the written

instructions stated 298,000. (Tr. 25.) Following its letter of February 13, 1919, appellant made and delivered 273,653 magazines, which, added to the 24,347 delivered prior to the suspension notice, totaled 298,000, for which the final payment was made on May 21, 1919. (Tr. 25.)

While it appears from the evidence that the Rochester District Claims Board had no authority to change the suspension order of January 29, 1919, it does not appear what member of that Board informed appellant that the notice covering 298,000 was incorrect and allowed it to manufacture that number instead of 142,000. (Tr. 24.) As late as August 1, 1919, the Chief of the Contract Section of the Ordnance Department never knew of that change. (Tr. 25.) On July 18, 1919, the Rochester District Claims Board requested the Chief of the Contract Section to issue an order of suspension against the contract of April 30, 1918, but did not mention the change that had been made in the notice, and the Chief of Ordnance, as late as August 1, 1919, notified the Rochester District Claims Board that he was willing to relieve from the manufacture and delivery of 298,000.[1] (Tr. 25.)

Before its letter of February 13, 1919, was written, the plaintiff had stopped work on the 142,000, having received the verbal instructions to discontinue on that number, although the written instructions stated 298,000 (Tr. 25), and made no request to be

[1] That number had been delivered and paid for by May 21, 1919, apparently unknown to the Chief of Ordnance until September 12, 1919.

allowed to furnish them (Tr. 25). Thereafter some of the orders for materials were canceled, some of the machinery for manufacturing the magazines was removed, and the space otherwise occupied. (Tr. 25.)

Numerous accounts growing out of the 18 contracts were pending (Tr. 25) and discussion was going on among the Ordnance officials in Washington as to what had become of the suspension order of January 29, 1919, and a possibility, after learning of the change, of charging back 156,000 magazines against the appellant as having been improvidently accepted and paid for (Tr. 25, 26.) The appellant was therefore anxious to close this contract on its books. (Tr. 25.)

Accordingly, on July 8, 1919, appellant wrote to the Rochester District Claims Board and, after referring to their long-distance telephone conversation of that day, said (Tr. 26) (italics ours):

> * * * if you have not already done so, we will thank you to make immediate arrangements to make application to Col. R. H. Hawkins, Chief of the Contract Section, Administration Bureau, Washington, for suspension request to be sent to us through your office, terminating the * * * contract, on which there are now due to the Government the quantity of 142,000 extra magazines for machine guns.
>
> *Upon receipt of this suspension request we hereby agree to immediately accept it without making claim for any portion of the 142,000 magazines so suspended.*

The letter further stated that by reason of the change in design appellant had "sustained a substantial loss of profit by reason of lost production, and inasmuch as this contract will have been suspended upon acceptance of the above-mentioned suspension request, we will then accordingly file our claim for recovery of this lost profit." [2]

Following up this letter of July 8, 1919, appellant persistently and repeatedly urged the officials of the Ordnance Department to revise the suspension order of January 28, 1919, so as to authorize delivery of 298,000 magazines. (Tr. 27.) Thus, on August 20, 1919, appellant again wrote to a Mr. Horton, referred to previous conversation between them, and urged that suspension request be issued "for our acceptance in termination of this contract" (Tr. 27), and added, "Some time ago we received verbal instruction of the Rochester office to discontinue the manufacture of these magazines, as they were not wanted. *So that there will be no misunderstanding,* we are anxious to receive and accept suspension request, *otherwise the contract will remain open on our books.* (Tr. 27.) And finally a verbal agreement was arrived at between representatives of the appellant and the Government (Tr. 27) by which the plaintiff agreed to "*abandon and settle all claims, controversies, and disputed points growing out of contract 48–A*[3] if Mr. Horton[4] would secure a revision of the suspension order

[2] Such a claim in the sum of $181,213.27 was presented to and disallowed by the Rochester District Claims Board, the grounds of disallowance not being shown. (Tr. 26.) Another claim of $26,711.03 was paid on November 12, 1919. (Tr. 26.)

[3] The contract of April 30, 1918.

[4] The representative of the Government.

of January 29, 1919, so as to allow the delivery of 298,000 magazines instead of 142,000." (Tr. 27.) Mr. Horton performed his agreement, and as a result of his efforts the suspension order of September 12, 1919, was issued, addressed to plaintiff by direction of the Chief of Ordnance, and signed by Lieutenant Colonel Hawkins, of the Ordnance office. (Tr. 27.) In substance that suspension order is the same as the suspension order of January 29, 1919, with this exception: The words "except such operations as may be necessary to complete delivery thereunder of a total (including all deliveries heretofore made) of 298,000 magazines, together with their spare parts" (Tr. 27), were substituted for the words "to the extent of 298,000 magazines, together with their spare parts" (Tr. 16).

Having, unknown to the Ordnance Department, secured the change from 298,000 to 142,000 by the unauthorized action of the Rochester District Claims Board, having been paid in full for all agreed deliveries under the contract, having agreed "to abandon and settle all claims, controversies, and disputed points growing out of" the contract, having received a total profit of $598,085 on the order, having actively solicited and procured the suspension request in termination of the contract for unmanufactured 142,000 magazines, having eagerly solicited the request because appellant was anxious "to close this contract on its books" in order "that there will be no misunderstanding," this appellant then naively acknowledged the eagerly solicited suspension request

of September 12, 1919, in these words: "Acknowledgment is hereby made of 'suspension request' * * * substituted for *incorrect suspension request* * * *" (Tr. 28) and "This corporation has suspended work in accordance with said request, reserving, however, all its rights against the United States * * * for failure of the Government fully to perform all the provisions of the contract * * * *and especially its rights to recover all the profits which it would have made had it been permitted to complete said contract*" (Tr. 28). In answer to letters which demanded "prospective profits," the Chief of Ordnance replied that the Government could not use and would not accept the 142,000, and he was not authorized to pay "anticipated profits." (Tr. 28.)

This suit was then commenced. On a full finding of facts from which the foregoing statement is made the Court of Claims dismissed the petition. (*Savage Arms Corporation* v. *United States*, 57 Ct. Clms. 71.)

II

ARGUMENT

A. THE OPPOSING ARGUMENT THAT NO DISPUTE EVER EXISTED BETWEEN THE PARTIES UPON WHICH TO EFFECT A COMPROMISE AND THEIR AGREEMENT TO SETTLE ANY ALLEGED DISPUTE WAS WITHOUT CONSIDERATION MAY NOT PREVAIL

In rejecting *in toto* the claim of the appellant with costs, the Court of Claims in its opinion used vigorous language appropriate to the circumstances (57 Ct. Clms. 71, 81, 82, 86, 87):

> Thus we find the plaintiff acting upon a verbal modification of a written order of sus-

pension extending expressly to 298,000 magazines, manufacturing, delivering, and receiving payment for the identical number it had been notified to suspend, and making but one feeble effort to have the verbal modification put in writing, until a date subsequent to the time when said magazines had been delivered and paid for. The plaintiff's attitude then, at this stage of the proceedings, as shown by the record, was simply this: We received a written order to suspend the manufacture of 298,000 magazines. We communicated with the defendant and it was verbally agreed that we might furnish 298,000 magazines and suspend 142,000. We furnished the 298,000; the defendant paid for them. We then in January did suspend the 142,000. We made no effort to manufacture or deliver the same, but on the contrary specifically asked for and agreed to accept a suspension order for the 142,000.

Why do we say this? Because the inference is irresistible. After the plaintiff had completed the manufacture and delivery of the 298,000 magazines and been paid therefor, its officers realized that this transaction had been closed upon the bare, uncertain authority of a verbal order, and therefore it was persistent and energetic in its efforts to have this past transaction officially and expressly closed by the proper authority, so that in no event could the large sums of money it had received thereunder be checked against other sums due the plaintiff under other contracts, aggregating millions of dollars.

This view of the situation is expressly confirmed and substantially put at rest by the letter of July 8, 1919, written by the plaintiff to the Rochester District Claims Board, wherein the plaintiff in positive terms expressly agrees to waive all claims for any portion of alleged damages due to the suspension of 142,000 magazines, if the officer addressed will "make immediate arrangements * * * for suspension request to be sent to us through your office terminating the above-mentioned C. M. G. 48–A contract." This letter of July 8, 1919, was the result of a verbal agreement between the plaintiff and the officers of the Rochester District Claims Board, subsequently ratified and confirmed by the Chief of Ordnance of the War Department at Washington. The history of this transaction alone is sufficient to determine the case adversely to plaintiff's contention.

* * * * *

On September 24, 1919, for the first time, we find a written reservation of the plaintiff's alleged claim for prospective profits on the 142,000 magazines undelivered. It at once arouses an extremely pertinent inquiry. Why this belated assertion of a claim which in all the correspondence between the parties—set forth in the findings—is not once reserved or treated in any other fashion than an unconditional surrender? We would dislike to indulge the inference that during this long period of time this particular claim was employed as a potent instrumentality to extract from the defendant a settlement advantageous to the

plaintiff's securing a final and complete adjustment of its business transactions with the defendant under its contract, and after having served its purpose in this respect appear again as an assertion of a separate and distinct liability. The officers of the defendant, beyond the peradventure of a doubt, believed and treated it as settled in the agreement made. The correspondence of the plaintiff, in every letter and in every request, expressly mentioned its existence and agreed expressly to accept the suspension notice for 142,000 magazines without qualification or reservation. As late as August 20, 1919, the plaintiff wrote the defendant to this effect, as set forth in Finding IV.

The whole argument of counsel for appellant is reduced to this proposition: The Government made the contract and its terms have not been rescinded in any way by the acts of the parties; all of the activities of the Savage Arms Corporation and its representatives with the Rochester District Claims Board and the Ordnance Department were to keep this contract alive until it was fully discharged; that nobody ever intended anything to the contrary; that when the Ordnance Department wrote the suspension notice of January 29, 1919, covering 298,000 magazines, which was promptly communicated to the Savage Arms Corporation, the Ordnance Department did not mean what it said; even though quickly the Savage Arms Corporation secured the change to 142,000 magazines through

the unauthorized action of Rochester District Claims Board, that, too, meant nothing except as it enabled the Savage Arms Corporation to deliver to the Government and receive payment for a vast quantity of unnecessary and useless material.

Having gotten that far, and then fearing that 156,000 magazines (the difference between 142,000 and 298,000) would be charged back against it as having been improvidently accepted and paid for, Savage Arms Corporation got active to secure the suspension order for 142,000 magazines and in writing assured the Government of its willingness "to immediately accept it without making claim for any portion of the 142,000 magazines so suspended." (Tr. 26.) This, we are told, was not compromise, or if it was compromise, the words are absolutely meaningless, as there was no consideration to support any compromise. The same is said with respect to the agreement of the appellant "to abandon and settle all claims, controversies, and disputed points growing out of the contract" if Mr. Horton would secure a revision of the suspension order, which Mr. Horton did. In all of these transactions with the officers of the Government who were liquidating the World War, it now appears that instead of undertaking an adjustment of its differences with the officers of the Government, and to close the contract on its books, and "to prevent misunderstanding," appellant was (1) securing a change through the unauthorized action of the Rochester District Claims Board of the suspension notice which had been sent

to it from the Ordnance Department in order that it might come into possession of a total profit of $598,086; and (2) it was laying the foundation for the suit in the Court of Claims for the further profit of $284,994 on the remaining 142,000 magazines.

Savage Arms Corporation solicited the suspension request of September 12, 1919, with the written representation that it would make no claim for the 142,000 (Tr. 26) and on an agreement "to abandon and settle all claims, controversies, and disputed points." It thus secured that suspension request (Tr. 27). Savage Arms Corporation then gave notice that it reserved all rights to recover anticipated profits. (Tr. 28.) Such is its position before the Court.

In *United States* v. *Behan*, 110 U. S. 338, 345, this Court announced the principal which is controlling here, thus:

> When a party injured by the stoppage of a contract elects to rescind it, then, it is true, he can not recover any damages for a breach of the contract, either for outlay or for loss of profits; he recovers the value of his services actually performed as upon a *quantum meruit*.

The Court of Claims said on the same subject (57 Ct. Clms. 86):

> It is elementary, and we need not cite authorities to sustain the proposition, that where a contractor under obligation to furnish a stated quantity of article finds his contract canceled and subsequently negotiates for the

> delivery and acceptance of a less quantity than originally intended, accepts payment therefor and a modification order in accord with the agreement, he can not then assert a claim for the undelivered balance. The position of the parties has been materially changed. The contractor must stand upon his legal rights under the original cancellation order; he can not abandon them and enter upon the performance of the agreement in accord with the accepted changes and at the same time assert the binding force of the original contract. Two avenues of redress were open to the contractor in the first instance, and the right of election was his. He might choose the course which in the end entailed the least loss, and induce the other party to accept a part performance in lieu of a total or partial breach, or he might treat the contract as at an end and sue for damages. He can not accept one remedy without losing the other.

In *Duesenberg Motors Corporation* v. *United States*, 260 U. S. 115, the contractor sued for anticipated profits which it failed to realize out of certain contracts for aeronautical equipment for war purposes because of alleged delays resulting from changes made in the specifications. The Court of Claims dismissed the petition. In affirming its judgment, this Court said (260 U. S. 122, 124, 125):

> The agreements are of significant strength. Their legal effect and that of the contract can not be determined by any one provision but

the totality of them must be regarded and their relations and purposes.

A war of magnitude was waging. The Government was eager for efficient instrumentalities and the contractor was enticed by the profit of their manufacture. The matters were urgent, but they were beset with contingencies. The Government could terminate the contract in the interest of the public welfare; and the war might cease. The latter did happen. However, before it happened, and before, it may be, there were signs of its happening, there were dealings and adjustments of preparation between the Government and the contractor. They took care of, and were intended to take care of, changing purposes, and no dissatisfaction was expressed.

* * * * *

It is manifest there were uncertainties on both sides and that, as they developed, preparations were necessary to meet them, and in meeting them the contractor did not regard the Government in any way delinquent. It was the abrupt and unexpected suspension of hostilities and the declaration of an armistice that was the cause of loss to the contractor, and the disappointment of profits from its contracts which it was preparing to realize and would have realized. But it took that chance and has not now a legal claim against the Government for reimbursement of its outlays. We need not distinguish between the outlays nor dwell upon them. They were outlays of the speculation and subject to sacrifice and loss with its disappointment.

> We have seen that counsel make much of the effect of the Government's urgency, and, it is contended, time in consequence became an essential of the contract. This, the contention is, influenced the contractor and necessarily determines the obligation of the Government. The Government was undoubtedly urgent, made so by its serious situation and tremendous responsibilities, but such was not the situation of the contractor. Time to perform its contract was all that was necessary to it, and but for the armistice it would have had time. If the armistice could have been foreseen, the relative situations might have been different. Expedition would not then have been exigent to the Government's purposes, but would then have been necessary to the contractor, if profits were to be realized from the production of the motors. There was no prophecy of the armistice—its sudden happening terminated the further execution of the contractor's undertaking, preventing, as we have said, the realization of profits. And, we repeat, this chance the contractor took and must abide the result.

In *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, 521, 522, this Court, in affirming the judgment of the Court of Claims, said:

> This disposition of the question also accords with the broad purposes of the legislation. When the act was passed we were in the midst of a great war, which called for the utilization of all our resources. The necessities were great, beyond the power of statement. The Government was confronted with the vital

necessity not only of producing ships and supplies in unprecedented quantities but of producing them with the utmost haste. Hence it was necessary that everything which stood in the way of or hindered such production should be put aside. But this was a necessity which Congress, of course, realized must sooner or later come to an end, suddenly and completely. With the termination of the war the continued production of war supplies would become not only unnecessary but wasteful. Not to provide, therefore, for the cessation of this production when the need for it had passed would have been a distinct neglect of the public interest. The situation, it is plain, required that production should proceed while the war lasted to the utmost limit of the Nation's power, but that it should come to an end as soon as possible upon the passing of the emergency. In the light of these circumstances it is not unreasonable to regard the statute now under consideration as intended to accomplish both results; that is, (1) to enable the President, during the emergency, to utilize his powers over contracts to stimulate production to the utmost, and (2) upon the passing of the emergency; to enable him to utilize these same powers to stop that production as quickly as possible. To the latter accomplishment authority to modify and cancel Government war contracts would contribute most effectively. These considerations lend support to the judgment of the court below construing the statute as having this effect.

Savage Arms Corporation not only did not reject the request of January 29, 1919, immediately to suspend operations with a view to the negotiation of a supplemental contract, but it promptly accepted the same and conducted negotiations with the view to a change of the terms thereof and actually solicited the request for suspension.

If in the first instance the request for suspension which appellant solicited from the Ordnance Department, "without making any claim for any portion of the 142,000 so suspended," had been sent to appellant by the Ordnance Department, it could not seriously be maintained that appellant was entitled to anticipated profits on the suspended 142,000. This is exactly its position here.

Opposing counsel cite *Roehm* v. *Horst*, 178 U. S. 1, 13 (Br. 27), which quotes language of Lord Justice Bowen thus: "The promisee, when confronted with the declaration of intention by the promisor not to carry out the contract, may treat the declaration as *brutum fulmen* and hold fast to the contract." Other cases are cited in support of that position.

The difficulty with their application here is that the appellant did not undertake "to hold fast to the contract" until after it had secured a total profit of $598,086 and a suspension request from the Ordnance Department for the 142,000 magazines. Up until that time the appellant and its representatives were exhausting every effort to get rid of the contract and were "anxious to close this contract on its books."

Opposing counsel contend (Br. 46) that because the Chief of Ordnance, on November 17, 1919, advised the appellant in reply to its inquiries as to the intention of the Government regarding the delivery of the remaining 142,000 magazines or the payment of prospective profits, that he was not authorized to pay anticipated profits on such magazines, the ordnance officer was not denying liability on the contract but was merely restating the holding of this Court in *Cramp Shipbuilding Co.* v. *United States*, 216 U. S. 494, 500. Therefore, counsel say, "the inescapable conclusion is that this agreement never appeared to anybody until the case reached the Court of Claims." (Br. 46.)

Such concluding argument is as far-fetched as all that precedes it. When the Chief of Ordnance advised that "he was not authorized to pay anticipated profits," he certainly was not admitting any liability for the 142,000 magazines for the manufacture and delivery of which appellant had asked to be relieved.

The thoroughly studied and carefully prepared opinion of Judge Booth, of the Court of Claims, concurred in by all of his associates, is entirely adequate and unanswerable.

B. COMPROMISES OF DIFFERENCES GROWING OUT OF CONTRACTS ARE ALWAYS ENCOURAGED AND USUALLY SUSTAINED BY THE COURTS.

The courts are inclined to encourage and sustain compromises in all instances where parties of intelligence have dealt with each other with a complete knowledge of all of the facts and circumstances.

Savage Arms Corporation was the aggressive party in securing the suspension request of September 12, 1919, for which it represented it would make no claim for the 142,000.

In *Mason* v. *United States*, 17 Wall. 66, 72, a case not unlike that at bar, this Court, speaking through Mr. Justice Clifford, said:

> Much discussion of the case is certainly unnecessary, as it is as clear as any proposition of fact well can be, that the claimant voluntarily accepted the modification of the contract as suggested by the commissioners, and that he executed the new contract in its place, which he must have understood was intended to define the obligations of both parties. His counsel suggest that he accepted the new contract without relinquishing his claim for damages, arising from the refusal of the United States to allow him to furnish the whole 100,000 muskets, but the court is unable to adopt that theory, as it is quite clear that he could not have acted with any such motives consistent with good faith toward the War Department, as he must have known that the Chief of Ordnance supposed when he, the claimant, returned the written contract duly executed, that the whole matter in difference was adjusted to the satisfaction of all concerned. Parties are bound to good faith in their dealings with the United States as well as with individuals, and the court is of the opinion that no party in such a case could be justified, after accepting such a compromise and executing such discharge, in claiming damages for a breach of the prior contract

which had been voluntarily modified and surrendered, unless the new contract was accepted under protest or with notice that damages would be claimed for the refusal of the United States to allow the claimant to fulfill the contract which was modified in the new arrangement.

In *Savage* v. *United States*, 92 U. S. 382, 388, this Court, speaking through Mr. Justice Clifford, reaffirmed the principle, thus:

> Parties having claims against the United States, which are disputed by the officers authorized to adjust the same, may compromise the claim, and may accept payment in a different medium from that promised, or may accept a smaller sum than that claimed; and where it appears that the claimant voluntarily entered into a compromise, and accepted payment in full in a different medium from that promised, or accepted a smaller sum than that claimed, and executed a discharge in full for the whole claim, or voluntarily surrendered to the proper officer the evidences of the claim for cancellation, he can not subsequently sue the United States and recover in the Court of Claims for any part of the claim voluntarily relinquished in the compromise. *Sweeny* v. *United States*, 17 Wall. 77; *United States* v. *Child*, 12 id. 244; *United States* v. *Justice*, 14 id. 549.
>
> Decisions of the kind by this court are quite numerous, and they show beyond all doubt that parties may adjust their own controversies in their own way, and that when they

> do so voluntarily, and with a full knowledge of their rights and all the circumstances, no appeal lies to the courts to review their mutual decision. Courts can not make contracts for parties; and if parties understandingly contract to adjust a controversy between them in a particular way, and actually execute the contract, they are both bound to regard the controversy as at an end.

In *Hennessy* v. *Bacon*, 137 U. S. 78, 85, this Court, speaking through Mr. Justice Harlan, said:

> With full knowledge of the title that Rogers had acquired, Hennessy deliberately chose to compromise the dispute between them, as shown by the agreement of 1886 and by the deeds executed in pursuance of its provisions. No fraud was practiced by Rogers. He was guilty of no unfairness. He concealed nothing that he was under legal obligation to state. His information in respect to the title was no greater than Hennessy had or than Hennessy could easily have obtained. It is the case of the compromise of a disputed claim, the parties dealing with each other upon terms of perfect equality, holding no relations of trust or confidence to each other, and each having knowledge, or having the opportunity to acquire knowledge, of every fact bearing upon the question of the validity of their respective claims. *Cleaveland* v. *Richardson*, 132 U. S. 318, 329. Such a settlement ought not to be overthrown, even if the court should now be of opinion that the party complaining of it surrendered rights that the law, if appealed to, would have sustained.

See also *French* v. *Shoemaker*, 14 Wall. 314, 333, 334; *Baird* v. *United States*, 96 U. S. 430; *De Wolf* v. *Hays*, 125 U. S. 614; *Coburn* v. *Cedar Valley Land Co.*, 138 U. S. 196, 216.

III

CONCLUSION

In denying its petition, the Court of Claims very properly assessed the costs against the appellant and its judgment should be affirmed in its entirety.

JAMES M. BECK,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

OCTOBER, 1924.

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